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1 IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MARYLAND

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3 WYNDHOLME VILLAGE, LLC, et al., \*

4 Plaintiffs/Counter-Defendants \*

5 \* CIVIL ACTION

6 vs. \* NO: L01-3809

7 \*

8 NADIF OF WYNDHOLME, LLC, et al., \*

9 Defendants/Counter-Plaintiffs. \* (Pages 1-154)

10 \* \* \* \* \*

11

12 The deposition of CURTIS C. COON was

13 taken on Wednesday, January 8, 2003, commencing at

14 10:16 a.m., at the Law Offices of Curtis C. Coon,

15 LLC, Suite 105, 305 West Chesapeake Avenue, Towson,

16 Maryland, 21204, before Jennifer Burghardt, Notary

17 Public.

18

19 \* \* \* \* \*

20 Reported by:

21 Jennifer Burghardt, Court Reporter

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1 was explained to me, was that its construction  
2 financing had fallen through due to the proposed  
3 lender having somehow or another the whistle blown  
4 on it for matters that were no way related to  
5 Wyndholme Village and basically closing its doors  
6 within a day or two before the thing was supposed  
7 to be funded.

8         So the construction financing had been  
9 the focus of the Wyndholme Village project from the  
10 time that I was introduced up to the time of this  
11 meeting as being the primary long-term goal. And  
12 what Zukerman and Fisher -- and, as I say, I don't  
13 think Quinn said a whole lot, but he was there.  
14 What Zukerman and Fisher were doing was showing  
15 that they had the financial strength, the  
16 wherewithal to make absolutely certain that this  
17 financing would be available, to the point where I  
18 recall very, very clearly, because it impressed me  
19 as being a basis to move forward -- knowing as much  
20 as I'm a lawyer that nothing means anything unless  
21 people are willing to perform -- when they said

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1 that if they had to, they could write a check for

2 it, you know.

3 There was talk about different

4 alternatives in terms of going forward, but the

5 basic proposition was that they had the strength to

6 go forward and make a loan for a, what subsequently

7 became a super priority loan. Also, there was some

8 concern raised by Stuart Fisher, Neil Fisher. I

9 believe it was he who raised the question that they

10 wanted to feel as though Mr. Lancelotta was himself

11 not in a position where he couldn't afford to keep

12 his own house in order. So there was some

13 discussion about that as well at that meeting. And

14 I believe that it was there or shortly thereafter

15 that talk was had with the Fisher side of the table

16 about making some sort of a loan also to

17 Mr. Lancelotta individually. Their concern was he

18 was the point guy, he was going to be the guy on

19 the site, and they did not want him to be in a

20 situation where he was having his house foreclosed

21 or what-have-you.

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1           Also, I think there was -- there were  
2       questions raised about putting together a package  
3       with the Seventh Day Adventist Church, because that  
4       parcel that I mentioned earlier in my testimony in  
5       response to your question of what was the project,  
6       it included -- the concept included that parcel,  
7       because it provided additional land that would  
8       support the concentrated development of the  
9       Wyndholme Village convent and regime. In other  
10      words, a number of units that could be built was  
11      enhanced greatly by having I think it was parking  
12      was going to take place over there.

13       Q. Was that --

14       A. In general, that's what the topic of  
15      discussion was at that meeting.

16       Q. Question on that parcel. Was that parcel  
17      immediately adjacent to the parcels that had  
18      already been assembled?

19       A. No.

20       Q. Across the street?

21       A. Across the street.

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1 Q. What did -- did the acronym NADIF,  
2 N-A-D-I-F, come up during that conversation?

3 A. I can't be sure.

4 Q. Okay.

5 A. I don't -- I don't know.

6 Q. Well, what did Mr. Fisher or  
7 Mr. Zukerman tell you about their ability to come  
8 up with the funding? You said that they could  
9 write a check if they had to. What did they tell  
10 you to substantiate that statement?

11 A. At that point there was not a great deal  
12 of substantiation in terms of things like financial  
13 statements, here's a copy of my bank account with  
14 10 million or whatever in it, none of that. But  
15 what it was was, look at what we've done, you know,  
16 and you've read about us, we're doing the  
17 Ritz-Carlton.

18 Mr. Fisher I found to be quite a  
19 loquacious individual who described himself to be  
20 very successful -- not just himself, but himself as  
21 a representative of the organization, which I knew

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1 at that time to be primarily related to a Pilevsky  
2 fellow in New York. And the success story that was  
3 told was quite impressive, because it included the  
4 Ritz-Carlton Hotel here in Baltimore, which I had  
5 read about in the papers as being something that  
6 was coming along at that time. He had mentioned  
7 successful, large scale real estate developments in  
8 other parts of the United States, and I recall them  
9 to be along the Atlantic Coast in various places.  
10 I thought he mentioned something in the Carolinas  
11 and some Florida developments as well. But it was  
12 -- also said that, I believe, he was either a juris  
13 doctorate or a lawyer. That this group, Quinn,  
14 Zukerman, Fisher, had been together. This was not  
15 -- they were not -- I mean, it's not the first  
16 thing they were doing as a group.

17 Mr. Rubenstein asked several questions  
18 about their capabilities. I don't recall all the  
19 questions he asked, but he asked several questions  
20 about how, things like how soon they could get the  
21 money, how -- I mean, they were this nature. I'm

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1 not trying to state exactly what he asked, but he  
2 was the one that was pressing them on their ability  
3 to perform. I did not represent the debtor. I was  
4 not there to make those judgments for the debtor.  
5 I was there as Mr. Lancelotta's attorney. It came  
6 clear that another component of this proposition  
7 was going to be that their group was going to own  
8 part of the project, and they wanted 10 percent, if  
9 I remember correctly, at the placement of the super  
10 priority, and they wanted to have half the project  
11 once they got the construction financing.

12 Q. That last point, 10 percent and then half  
13 if they got construction financing, you believe  
14 that was part of the initial discussion, the  
15 conceptual discussion you had?

16 A. I can't be a hundred percent clear that  
17 that was specifically stated to those exact  
18 percentages at the first meeting. I cannot. I can  
19 say that there was discussion that they would be an  
20 equity participant for sure and that their terms  
21 were going to be terms that were going to be more

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1 -- well, let me back up. My experience with  
2 bankruptcy is that when you look for a lender in  
3 real estate bankruptcy, you got to

4 Expect a good one of these: Receiving  
5 high interest rates, lots of points or whatever,  
6 and that sort of thing.

7 The Fisher, Zukerman crowd came in  
8 saying, we're going to make you a more, somewhat  
9 more reasonable loan, but we're going to take a  
10 fairly significant equity position. That was their  
11 I guess you call it modus operandi in terms of  
12 getting their compensation. It was clear that it  
13 wasn't going to be one where they wanted to soak up  
14 all the money in interest. And they came in also  
15 saying, and I'm sure this was the first meeting,  
16 that they were very, very interested in making an  
17 investment in Baltimore. You know, they had this  
18 Ritz-Carlton thing. They said, look, you know, you  
19 may think we're just in this for a big commercial  
20 glitz. We're not. We feel a responsibility to the  
21 community. We want to be part of the Baltimore



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1 community. This thing with -- if we can make some  
2 money and lend money on a project that's going to  
3 establish the first significant community for the  
4 deaf, why, that's great, that's what we're looking  
5 for.

6 They did not make a proposition of making  
7 this an eleemosynary loan, but they did express  
8 their interest in this loan as opposed to other  
9 loans. It was kind of a question of, well, why  
10 this project and not a different project?

11 And their answer was, because we have an interest  
12 in doing something that will highlight our concern  
13 about the community, and this was an opportunity  
14 they felt would help them do that.

15 Q. Okay. In terms of where their money was  
16 coming from, you mentioned a Mr. Pilevsky?

17 A. I thought it was Pilevsky or something  
18 like -- Phillip was the first name. I never met  
19 the man. Pilevsky, Pilvesky.

20 Q. Mr. P?

21 A. You can call him Mr. P. I don't know

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1 that I ever dealt with that individual per se.

2 Q. Did the name Gotham come up at all during  
3 that initial discussion; do you recall?

4 A. Can't say for sure.

5 Q. How about North American Doctors  
6 Investment Fund, which would have the acronym  
7 NADIF? I think you testified before you don't  
8 recall?

9 A. What came up was -- what came up was --  
10 whether it was the first meeting or within a short  
11 time thereafter, I cannot recall specifically. But  
12 what came up was, and the way it was explained to  
13 me was, by Mr. Fisher was a doctors fund. I don't  
14 think he said North American whatever whatever  
15 whatever, but he said he had a doctors fund that  
16 had, I think he said, hundreds of millions of  
17 dollars, and this was the basis on which he was  
18 drawing the conclusion that the organization, that  
19 they -- as I put it together looking back -- but  
20 you're asking a different question. So let me back  
21 up.

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1           At that time did I know it was NADIF  
2   per se? I don't know. But it was either at that  
3   meeting or shortly thereafter that he explained he  
4   had a doctors fund, which is what I believe turned  
5   out to be NADIF. And I have to also say that there  
6   was reference to Gotham at a fairly early stage in  
7   this, and I thought that they were generically  
8   referring to New York City. I didn't realize that  
9   Gotham was the name of an entity until some time  
10   much later. I thought they were talking about  
11   Gotham as being an infinity type term to describe  
12   their business associates who work out of New York.

13       Q. Okay. Let me call your attention on  
14   Exhibit 1 to page six, first of all, at the bottom  
15   of the page. And just I'll make a representation  
16   to you that you can explore it further if you  
17   choose, but on paragraph nine, which starts on the  
18   bottom of page six, has a -- lists a series of  
19   representations that Mr. Lancelotta says were made  
20   to him in a meeting with Mr. Fisher, and then  
21   paragraph 10 on page nine refers to a meeting with

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1 you and others on June the 8th where he says these  
2 representations were repeated. So I just want to  
3 go down some of these representations and see if  
4 they are consistent with your recollection.

5 A. Go ahead.

6 Q. And the first question I have is on page  
7 seven at the top of the page. He says, Mr. Fisher  
8 -- and I'll just read it and get your comment on  
9 it.

10 "Fisher told me they were successful  
11 developers and had the financial resources and  
12 strength to fund a loan of millions of dollars to  
13 Wyndholme Village for the completion of the  
14 development of the property for the project."

15 Is that consistent with what you recall  
16 being said at the meeting?

17 A. That is definitely consistent with what I  
18 recall being said.

19 Q. Okay. Next sentence says, "He told me  
20 that they were individuals who were developing the  
21 inner harbor Ritz-Carlton and arranged \$40 million

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1 for Richard Swirnow to complete the inner harbor  
2 project."

3 Is that also consistent with what he  
4 told you?

5 A. Totally consistent, except that I do not  
6 recall an amount of money being mentioned. I'm not  
7 saying I recall no amount. I'm just saying I can't  
8 say if he said 40 million or whatever he said, but  
9 I'm absolutely certain that direct reference was  
10 made to the Ritz-Carlton and the dimensions of that  
11 project.

12 Q. I want to drop down about three lines and  
13 read the next one. It says, "Fisher, in the  
14 presence of Quinn and Zukerman, told me that the  
15 three of them were principals of North American  
16 Doctors Investment Fund, which Fisher told me had  
17 assets in excess of \$500 million and in which  
18 Pilevsky" -- there's the name -- "was a major  
19 investor."

20 Do you recall that being said in your  
21 presence at the meeting later that day?

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1       A. I guess what I'm learning is I'm not as  
2       good at remembering dollar numbers as I thought,  
3       because, I mean, I just don't recall the number 500  
4       million. My impression was that it was hundreds  
5       and hundreds of millions. It could have been 500.  
6       It could have been 300. It could have been 700.  
7       The impression I would have drawn from it would  
8       have been exactly the same as the impression I have  
9       today, which is they had all the money in the  
10      world, so-to-speak, and could write a check for  
11      this project.

12           Now, as I also said, North American  
13      Doctors Investment Fund, I do believe that is what  
14      the doctors fund turned out to be. I don't have a  
15      perfect recollection of hearing that term, North  
16      American Doctors Investment Fund, at that meeting.

17      Q. All right. The next sentence says,  
18      "Fisher told me that North American Doctors  
19      Investment Fund would be able to obtain the  
20      millions of dollars required to pay off the  
21      existing debt and to finance the completion of the

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1 project."

2 I gather from your prior testimony that

3 that's consistent with what you heard at your

4 meeting that day, except for the identification

5 specifically of that source?

6 A. Right. I think yes, yes. And my earlier

7 testimony when you asked what were the components

8 of this, one of the things that was talked about in

9 terms of how to get to the point of doing a

10 construction loan, one of the mechanics of it had

11 to do with what to do with the existing liens and

12 the existing loans. I didn't really get into that

13 in my earlier answer, but seeing what you just

14 quoted to me reminds me that that was part of what

15 was needed or viewed as being needed to make a

16 development work, was to deal with the existing

17 lenders.

18 Q. Next sentence reads, "Fisher also told me

19 that if NADIF could not obtain financing from a

20 third party, NADIF had more than enough assets to

21 make the loan itself."

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1 Is that consistent with what you heard

2 in your meeting that day?

3 A. I believe it is, yes.

4 Q. On that point, at that time was it your

5 understanding from what you heard from Fisher that

6 the concept was that they could obtain financing,

7 they could get it from some third party? That was

8 the principal objective, and if that failed, then

9 they could provide it themselves, is that correct,

10 as opposed to doing it initially with NADIF's money

11 or whatever money these folks actually controlled?

12 A. It was my impression that they could do

13 it either way. That they could do it either way,

14 and that they might try to obtain it elsewhere, but

15 that it didn't really matter whether it came from

16 elsewhere or them. I think the reason for getting

17 it from elsewhere got back in part to this issue

18 about getting a good rate and that kind of thing.

19 And I think -- I think what they -- it was it

20 didn't really matter whether it was them or someone

21 else. One way or the other, the money was going to



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1 be there.

2 Q. All right. Flip over to page eight if  
3 you would, please. Five lines down there's a  
4 sentence that reads as follows, six lines, I

5 Guess: "He told me that he was the Chief  
6 Executive Officer of North American Doctors  
7 Investment Fund, Inc., and would be the Chief  
8 Executive Officer of NADIF of Wyndholme, LLC."

9 Do you recall discussions of that topic  
10 or those topics during your meeting?

11 A. I recall that he was -- I recall that Mr.  
12 Zukerman was the Chief Financial Officer and that  
13 Mr. Fisher -- I take it this sentence is relating  
14 to Mr. Fisher?

15 Q. Is relating to Mr. Fisher, yes. I'm  
16 sorry.

17 A. -- was not a financial officer, but  
18 a -- whether he actually said Chief Executive  
19 Officer at that meeting, I can't recall, but what  
20 his position was that was explained to me was he  
21 was the guy that had the authority to do the deal.

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1 Q. Okay.

2 A. That's the impression I was left with. I

3 have searched my files looking for my notes for

4 that meeting, and I want the record to be clear

5 that I'm testifying without any notes about that

6 meeting. I cannot find any notes about that

7 meeting, and I spent hours yesterday looking

8 through my records. But I just want to be very

9 careful and say that I was left with the impression

10 that he was the top dog, if you will. Whether it

11 was the top dog or the Chief Executive Officer of

12 North American Doctors Investment Fund, Inc., you

13 know, I didn't carry that appellation around with

14 me, but I had the definite impression Mr. Fisher

15 was among the people involved in this loan. Mr.

16 Fisher was the one that had the ability to make the

17 call, the business judgment decisions. That Mr.

18 Zukerman was the one who was a financial officer

19 and Mr. Zukerman had -- you know, I think he even

20 showed up at the meeting with one of those green

21 graph paper accounting sheets to take notes on or

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1     whatever. You know, it was clear he was the  
2     accountant. And Mr. Quinn, I never really got a  
3     good explanation of where he fit in.

4         Q. So, just to make sure I understand, you  
5     perceived that Mr. Fisher had the authority to act  
6     on behalf of whomever it was that they were  
7     referring to when they talked about their funding  
8     capabilities. Is that a fair statement?

9         A. Yes.

10        Q. All right. Now, at the time that -- at  
11     that first meeting you talked about an initial  
12     infusion of cash that I gather ultimately became  
13     the 750 thousand dollar super priority  
14     lien/loan. Is that what happened ultimately on  
15     that issue?

16        A. That did ultimately occur.

17        Q. Do you recall whether that dollar amount  
18     was on the table at the time of your initial  
19     discussions on this topic?

20        A. I don't recall the exact dollar amount.

21        Q. Okay. Do you recall -- was there a